

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

John A. Davis,

Complainant,

vs.

AT&T Communications of California, Inc.,

Defendant.

(ECP)

Case 02-10-043

(Filed October 30, 2002)

OPINION GRANTING RELIEF

1. Summary

John A. Davis (Complainant) alleges that AT&T Communications of California, Inc. (AT&T) failed to give him notice that: (1) it changed the time for minimum billing increments from 30 to 60 seconds on November 15, 2001; and, (2) it implemented a minimum usage fee effective January 1, 2002. AT&T denies the allegation that Complainant was not provided proper notice.

We conclude that Complainant did not receive reasonable notice of the billing changes at issue. The motion to dismiss is denied, and we find for Complainant. This proceeding is closed.

2. Discussion

We address Complainant's two issues below:

A. Change of minimum time for billing increments

Complainant alleges that on November 15, 2001, AT&T arbitrarily changed the minimum billing time increments for telephone calls from 30 seconds to

60 seconds. AT&T responds that in Complainant's September 3, 2001 bill, he received notice of the change in minimum billing time increments. According to AT&T, Complainant therefore had 73 days' notice of this change.

Complainant's September 3, 2001 bill states:

The initial period and minimum time requirements for outbound dialing, toll-free and calling card calls placed within the state, including local calls, will be increased to 60 seconds. For more information, please contact the Customer Care number on the first page of your bill.

Further, we note that on January 9, 2002, in the Second Interim Opinion Adopting Certain Requirements for Notifying Telecommunications Customers of Proposed Transfer, Withdrawal of Service, or Higher Rate or Charges, in Rulemaking 98-07-038, the Commission stated:

A utility may give notice by one or a combination of means. These include bill inserts, *notices printed on bills*, separate notices sent by first-class mail, and e-mail to those customers who receive bills from the utility by e-mail. (Decision (D.) 02-01-038, *mimeo.*, p. 3, emphasis added.) (*See* also Rule 2 in the Appendix of that decision.)

The same decision (in Rule 3) required at least 25 days notice of a rate increase. We agree that Complainant did receive a notification in his September 3, 2001 bill, 73 days before the effective date of the change from 30 to 60 seconds minimum billing increments. However, that notification does not meet the Commission's standards of reasonableness for providing customers with notice of rate changes. While AT&T did provide language on the bill indicating the change in policy, the placement of the language violates Commission rules because it was printed in less than 10-point type, and because it violates reasonableness as required by Pub. Util. Code § 451. Appendix A, Rule 6.D., in D.95-07-054 states;

Notice the CLC sends to customers shall be a legible size and printed in minimum point size type to 10.

Further, the notice of the rate change was contained on page 3 of the telephone bill under the heading, "Regulatory News." Inclusion of a rate change under such a heading is misleading, and is therefore not reasonable as the rate change has nothing to do with regulatory news. Other portions of the AT&T bill include the heading "Important News About Your Account." Inclusion of the rate change in such a heading would have been reasonable and not misleading.

Accordingly, we agree with Complainant's first allegation of wrong-doing.

B. Minimum Usage Fee

Complainant contends that AT&T instituted a minimum usage fee effective four days before it gave notice on January 3, 2002. AT&T responds that Complainant's AT&T All-In-One service agreement only requires that AT&T provide notice of changes of terms and conditions on its website in advance of the billing period in which the changes become effective. AT&T provided notice of implementation of the minimum usage fee on its website beginning December 15, 2001. According to AT&T, Complainant therefore had 17 days notice of this change before it became effective.

We conclude that this form of notice (by website) does not comply with D.95-07-054. Appendix A, Rule 6.A.(1), of that Decision states;

Notice of major increases in rates shall be provided in writing to customers and postmarked at least 30 days prior to the effective date of the change.

The website notice given by AT&T does not in itself constitute notice. Conceivably, a utility may properly provide notice to customers of rate changes by e-mail when the customer normally receives billings by electronic means. However, this is not the case in this complaint, and the customer must be

notified in writing by mail. AT&T's All-In-One service agreement cannot preempt the Commission when requiring customers to accept terms of service (such as website notification) not in compliance with Commission decisions.

Complainant's January 3, 2002 bill states:

AT&T is making changes to the minimum usage charge effective January 1, 2002. This charge will not affect you if your long distance usage charges exceed \$15.00 during the billing month. If your long distance usage falls below this amount, you will be assessed a \$9.95 fee in addition to your usage charges. For more information please contact the Customer Care number on the first page of your bill.

The above notice printed on Complainant's bill did not provide adequate notice within 30 days of the effectiveness of the newly instituted charges. The fact that notice of the new fee was provided in Complainant's January 3, 2002 bill and was supposed to be effective January 1, 2002, is troubling. Because the Complainant did not incur the fee until March 2002, we find that Complainant did not suffer harm even though the billing notice he received was not timely in terms of the ostensible effective date of the change. However, the AT&T notice is deficient and was improper because it was not provided within 30 days prior to its effective date.

In summary, the two notifications by AT&T did not comply with Commission rules promulgated in D.95-07-054, and are not reasonable as required in Pub. Util. Code § 451. We find for the Complainant.

3. Procedural Summary

AT&T filed its answer to the complaint on November 25, 2002. Complainant did not file a reply to AT&T's answer, and this matter was submitted for decision based on the pleadings.

4. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Bertram D. Patrick is the assigned Administrative Law Judge in this proceeding.

O R D E R

IT IS ORDERED that:

1. The impounded amount of \$40.55 held by the Commission shall be disbursed to John A. Davis.
2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.